

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Opoku-Agyemang	Team: Squad #5	CCRB Case #: 201503932	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/07/2015 5:00 AM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 11/7/2016	EO SOL 11/7/2016	
Date/Time CV Reported Sun, 05/17/2015 6:57 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 05/17/2015 6:57 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			075 PCT
2. LSA Michael Doyle	00000	917072	075 PCT
3. POM Joseph Nicosia	02777	949395	075 PCT
4. INS Michael Lipetri	00000	906647	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kelly Quinn	14019	944912	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Abuse: An officer threatened to arrest § 87(2)(b)	§ 87(2)(b)
B. LSA Michael Doyle	Abuse: Lieutenant Michael Doyle entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C. INS Michael Lipetri	Abuse: Inspector Michael Lipetri entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
D. An officer	Abuse: An officer searched § 87(2)(b)'s prosthetic leg.	§ 87(2)(b)
E. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	§ 87(2)(b)
F. INS Michael Lipetri	Discourtesy: Inspector Michael Lipetri spoke discourteously to § 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

### Case Summary

This case was not closed within 90 days because of the difficulty encountered in identifying the officers involved in this case and in obtaining sworn statements from the victims.

At approximately 5:00 a.m. on May 7, 2015, four officers from the 75<sup>th</sup> Precinct, Inspector Michael Lipetri, the commanding officer of the precinct, Lieutenant Michael Doyle, the special operations lieutenant, and Police Officer Joseph Nicosia and Police Officer Kelly Quinn, assistant field intelligence officers, went to § 87(2)(b) a two-story one-family home in Brooklyn. The officers went to the location to inform § 87(2)(b) of his enrolment in the NYPD's Operation Ceasefire (BR01). They were also in possession of arrest warrants for two individuals whose addresses were listed on the arrest warrants as § 87(2)(b) (BR02). § 87(2)(b) opened the door and spoke with the officers. An unidentified officer allegedly threatened to arrest her and everyone else in the house if she did not allow them to enter the house (**Allegation A**). The officers proceeded to enter the first floor of the house and conduct a search for the two individuals listed on the warrants (**Allegation B and C**). § 87(2)(b) was on the first floor while § 87(2)(b) was in the basement. The officers entered the basement of § 87(2)(b) where they conversed with § 87(2)(b) about Operation Ceasefire. During this conversation, an unidentified officer allegedly searched § 87(2)(b)'s prosthetic leg (BR03 & BR04) and spoke discourteously to him (**Allegation D and E**). Inspector Lipetri also spoke discourteously to § 87(2)(b) (**Allegation F**). § 87(2)(g), § 87(4-b)

§ 87(2)(b) audio-recorded his conversation with the officers on his phone. He played the recording during his CCRB interview on June 24, 2015 § 87(2)(b) Interview Transcript) and provided a copy via email following the interview (embedded below).



201503932\_20150624\_1339\_DM.3gp

### Mediation, Civil and Criminal Histories

On November 12, 2015, a Notice of Claim search was requested from the Comptroller's Office. A response is being awaited and will be added to the casefile upon receipt. § 87(2)(b) refused to resolve this complaint via mediation because he did not wish to see the officers again.

§ 87(2)(b)

### Civilian and Officer CCRB Histories

- This is the first CCRB case involving § 87(2)(b) and § 87(2)(b) (BR06).
- § 87(2)(b)

§ 87(2)(b)

- Inspector Lipetri has been a member of the NYPD for 21 years and has had 25 previous CCRB allegations in 13 cases with one substantiated allegation. In CCRB case # 200201651, a discourtesy allegation was substantiated against Inspector Lipetri. Inspector Lipetri has had eight prior entry and search allegations pleaded against him. Seven of these allegations were exonerated and one was closed as victim uncooperative.
- Lieutenant Doyle has been a member of the NYPD for 19 years and has had 26 previous CCRB allegations in 9 cases with one substantiated allegation. In CCRB case #201308582, an entry and search allegation was substantiated against Lieutenant Doyle.

§ 87(2)(g)

- Police Officer Nicosia has been a member of the NYPD for five years and has had 12 previous CCRB allegations in four cases with four substantiated allegations in one case. In CCRB case #201304366, allegations of gun point, threat or damage or seize property, discourteous action, and search of person were substantiated against Police Officer Nicosia. § 87(2)(b), § 87(2)(g)

### **Potential Issues**

§ 87(2)(b) the father of § 87(2)(b) and § 87(2)(b) § 87(2)(b) filed the initial complaint on May 17, 2015. He was not present at the time of the incident and no sworn statement was obtained from him in regards.

§ 87(2)(b) provided a telephone statement on May 21, 2015, and on June 24, 2015, after twice rescheduling his interview appointment, he provided a sworn statement to the CCRB.

§ 87(2)(b) provided a telephone statement on July 1, 2015, but missed two subsequent interview appointments without calling to cancel or reschedule. § 87(2)(b) did not respond to attempts to contact him. On September 25, 2015, CCRB investigators went to § 87(2)(b) to conduct a photo viewing interview with § 87(2)(b) § 87(2)(b) and § 87(2)(b) were home and sworn statements were obtained from them.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

In both of § 87(2)(b)'s statements, she stated that she spoke primarily to one officer at the front door. She alleged that, upon her opening the door, this officer placed his foot at the base of the door (BR07) and his hand on the door (BR08) and that this officer later threatened to arrest her and everyone else in the house if she did not allow them into the house.

§ 87(2)(b) and § 87(2)(b) consistently stated that four officers came to § 87(2)(b) on May 7, 2015. Inspector Lipetri, Lieutenant Doyle, Police Officer Nicosia, and Police Officer Quinn consistently identified themselves and each other as the four officers who went to § 87(2)(b) on May 7, 2015. Both Inspector Lipetri and Lieutenant Doyle identified themselves as the officer who spoke with § 87(2)(b) at the front door of § 87(2)(b). Police Officer Nicosia stated that both Inspector Lipetri and Lieutenant Doyle stood at the door and spoke with § 87(2)(b). Police Officer Quinn identified Lieutenant Doyle as the officer who spoke with § 87(2)(b) at the door.

In her telephone statement, § 87(2)(b) described the officer with whom she spoke at the door as an approximately 5'8" to 5'9" tall white male with an average build and dark hair. In her sworn statement she described this officer as an approximately 5'8" tall white or Hispanic male in his 40s with an average build who provided his rank as a "sergeant." Inspector Lipetri is a § 87(2)(b) with brown hair and Lieutenant Doyle is a § 87(2)(b) with brown hair.

Single-shot photo viewing interviews were conducted with § 87(2)(b) (BR09), § 87(2)(b) (BR10), and § 87(2)(b) (BR11) on September 25, 2015. Photos of Inspector Lipetri, Lieutenant Doyle, Police Officer Nicosia, and Police Officer Quinn, along with three fillers, were shown to each individual. § 87(2)(b) identified one of the filler photographs as the officer who spoke with her at the front door. § 87(2)(b) identified the photograph of Inspector Lipetri as the officer whom he observed speaking to § 87(2)(b) at the front door. He, however, identified two of the filler photographs as also having been present during this incident. § 87(2)(b) was not present for the initial interaction at the front door and failed to identify any of the officers in the photographs as having been present during this incident.

Given § 87(2)(b)'s inability to identify the officer who threatened to arrest her and the other factors enumerated above, the investigation was unable to identify this officer. A threat of arrest allegation was therefore pleaded against "An officer" from the 75<sup>th</sup> Precinct.

It is undisputed that the officers' primary reason for going to § 87(2)(b) was to notify § 87(2)(b) of Operation Ceasefire. Given the fact that he was the highest ranking officer on scene and acknowledged having been an active participant in the entry of § 87(2)(b) an entry and search allegation is pleaded against Inspector Lipetri. Furthermore, given the fact that Lieutenant Doyle was in charge of finding and researching the warrants on the basis of which Inspector Lipetri entered § 87(2)(b) in addition to acknowledging having been an active participant in the entry, entry and search allegations have been pleaded against him as well.

§ 87(2)(b) alleged that, while he was speaking with the officers in the basement, one of them picked up his prosthetic leg, which he was not wearing at the time, and removed objects from inside the bowl atop the leg (BR03 & BR04). § 87(2)(b) asked the officer "Why you over there fucking with my leg?" The officer replied, "I'm not fucking with your leg." The verbal portion of this exchange was captured in § 87(2)(b)'s audio recording of the incident. § 87(2)(b) and § 87(2)(b) who were undisputedly present during this exchange, were unable to identify this officer in the photo viewing interview. § 87(2)(b) stated that § 87(2)(b) was not present in the basement during his conversation with the officers and § 87(2)(b)'s voice does not appear on the audio recording. § 87(2)(b) however, recounted this exchange and identified Inspector Lipetri as the officer who searched § 87(2)(b)'s leg. This identification was deemed unreliable due to the fact that, in the audio recording, the voice consistently identified by all of the officers as that of Inspector Lipetri is heard speaking to § 87(2)(b) at the time that § 87(2)(b) has this exchange with a different voice in the background.

All of the officers denied having searched or having observed an officer searching § 87(2)(b) s prosthetic leg. None acknowledged having heard the exchange regarding an officer “fucking” with § 87(2)(b) s prosthetic leg during the incident. The recording of the exchange was played for them during their interviews. They acknowledged hearing it on the recording but denied having heard it during the incident. None of the officers could identify the voice that states, “I’m not fucking with your leg.”

The officers generally acknowledged that they searched locations in the house where a person could hide, such as underneath beds and tables and in closets, for the two individuals on the warrants. This was consistent with § 87(2)(b) and § 87(2)(b) s accounts of the actions that the officers performed in the rooms they entered. These searches were therefore pleaded as part of the entry and search allegations against Inspector Lipetri and Lieutenant Doyle. A search of § 87(2)(b) s leg, however, does not fit this criterion. It is therefore pleaded separately, along with a discourtesy allegation, against “An officer” from the 75<sup>th</sup> Precinct.

### **Allegations not pleaded**

In her telephone statement, § 87(2)(b) stated that the officers showed the warrants to her at the front door prior to entering. In her sworn statement, however, she stated that when she asked to see the warrants at the front door the officers refused to show them to her, though they later did so once they were inside the house. An allegation of refusal to show arrest warrant was therefore not pleaded in regards.

### **Recommendations**

#### **Allegation A – Abuse of Authority – An officer threatened to arrest § 87(2)(b)**

As previously discussed, the investigation was unable to identify the officer who allegedly threatened to arrest § 87(2)(b) § 87(2)(g)

#### **Allegation B – Abuse of Authority – Lieutenant Michael Doyle entered and searched § 87(2)(b) in Brooklyn.**

#### **Allegation C – Abuse of Authority – Inspector Michael Lipetri entered and searched § 87(2)(b) in Brooklyn.**

§ 87(2)(b) provided a telephone statement on May 21, 2015 (BR12), and a sworn statement on June 24, 2015. § 87(2)(b) provided a telephone statement on July 1, 2015 (BR13) and a sworn statement on September 25, 2015. § 87(2)(b) provided a sworn statement on September 25, 2015. The CCRB interviewed Lieutenant Doyle on September 10, 2015, Inspector Lipetri on October 16, 2015, and Police Officers Quinn and Nicosia on October 21, 2015.

§ 87(2)(b) provided an account of this incident that was in many ways incongruous with aspects of this incident that are undisputed and consistent in the accounts of his family members and the officers.

It is undisputed that Inspector Lipetri, Lieutenant Doyle, and Police Officers Quinn and Nicosia

went to § 87(2)(b) primarily to speak to § 87(2)(b) about Operation Ceasefire. Inspector Lipetri and Lieutenant Doyle described Operation Ceasefire as a violence interdiction program established by the NYPD, in conjunction with the Department Of Corrections, Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Sheriff's Office, the Brooklyn District Attorney's Office, and various Probation and Parole Agencies, to attempt to reduce crime by identifying and tracking members of gang crews who are on parole or probation and giving them a notification that their parole or probation conditions could be tightened if the violence continued.

As per Inspector Lipetri and Lieutenant Doyle, § 87(2)(b) was identified as a member of a gang that was active in the 75<sup>th</sup> Precinct, the § 87(2)(b)s. Members of the gang, but not § 87(2)(b) himself, were being investigated in regards to murders that had occurred shortly before May 7, 2015. The visit to speak to § 87(2)(b) was in order to apprise him of Operation Ceasefire and its parameters.

As per Inspector Lipetri and Lieutenant Doyle, in preparation for visiting § 87(2)(b) to speak to § 87(2)(b) an intelligence investigation was conducted into the location, including conducting a search to determine whether any residents of the location had open warrants. Lieutenant Doyle found two bench warrants, § 87(2)(b)

§ 87(2)(b) Lieutenant Doyle did not recall whether they had any other documentation or information indicating that either individual still resided at that address or would be there at the time they were planning to go there. Inspector Lipetri did not recall whether the intelligence package provided to him by Lieutenant Doyle contained any intelligence as to whether the two individuals still resided at the location. Police Officers Quinn and Nicosia stated that they were informed of the warrants by Lieutenant Doyle on the morning of May 7, 2015, and did not recall whether they were informed of any information regarding whether the subjects of the warrants still resided at that address or would be home at the time they were going.

All interviewed officers and civilians, except for § 87(2)(b) stated consistently that the officers entered § 87(2)(b) on the first floor through the front door, searched rooms on the first floor, and then went to the basement to speak to § 87(2)(b) stated that officers never entered the first floor and were given consent to enter the basement through the external side entry, which they proceeded to do).

As per § 87(2)(b) when she opened the front door of § 87(2)(b) she "cracked" the outer door open and stood in the vestibule, in the gap between the door and the frame (BR14). As soon as she opened the door, an unidentified officer, either Inspector Lipetri or Lieutenant Doyle, placed his foot across the threshold of the door and against side of his foot against the door (BR07) and his hand across on the door (BR08). The officer stated that they had a warrant for individuals at the house. In her sworn statement, § 87(2)(b) stated that the officer did not show her the warrants at the front door. In her telephone statement, however, she stated that the officer showed her the warrant and she informed him that the individuals on the warrants did not reside at the location. The officer informed § 87(2)(b) that if she did not let them into

the house, they would arrest everyone in the house. As the officer spoke with § 87(2)(b) he attempted to push the door open wider but § 87(2)(b) kept one foot behind the door to keep it from opening any further. § 87(2)(b) initially stated that the officers “pushed their way” into the house. Upon further questioning, however, § 87(2)(b) stated that she did not want the officers to force their way into the house so she stepped out of the doorway and allowed the officers to enter. § 87(2)(b) stated that she decided to allow the officers into the house in order to prevent them from forcibly entering and leading to a confrontational situation. She opened the front door fully, then opened the screen door fully and said to the officers, “Go on, go on,” at which point the officers entered the house. Once the officers entered the house, the unidentified officer asked § 87(2)(b) where § 87(2)(b) was and she replied that he lived in the basement. According to § 87(2)(b) the officers did not bring up § 87(2)(b) until they were already inside the house.

The officers provided generally consistent accounts of the entry of the house, with the primary exception being their inconsistencies as to who was speaking to § 87(2)(b) at the door. All of the officers denied having placed their foot or hand on the door after she opened it or having observed another officer do so. All consistently stated that an officer informed § 87(2)(b) of the warrants prior to their entering the house. Lieutenant Doyle stated that § 87(2)(b) informed them that the individuals on the warrants did not reside there. Inspector Lipetri, Lieutenant Doyle, and Police Officer Nicosia stated that the officers also informed her that they were there to speak to § 87(2)(b). Police Officer Quinn stated that she was only informed about § 87(2)(b) after they entered. They all denied that an officer threatened to arrest § 87(2)(b) or the residents of the house. Lieutenant Doyle, Police Officer Nicosia, and Police Officer Quinn denied that officers attempted to force their way into the house. They consistently stated that, after she was informed of why the officers were there, she stepped out of the doorway. They interpreted this as consent to enter the house, and proceeded to do so.

Inspector Lipetri stated that he entered § 87(2)(b) on the basis of the “legal authority” provided by the two warrants to enter the location and did not seek nor believe that he required § 87(2)(b)'s consent in order to enter. He stated that, due to the fact that he performs such entries on a frequent basis, he did not specifically recall whether on this specific occasion § 87(2)(b) stepped out of the way and allowed them to enter or whether they forced their way in.

To lawfully effect an arrest inside of a premises, based on an arrest or bench warrant, the police must reasonably believe the defendant will be present at the location and that the location is his residence. If the location is not the subject’s residence, officers need a search warrant in order to forcibly enter. Criminal Procedure Law Section 120.80 and Patrol Guide Section 208-42 (BR15). Consent for officers to enter a location must be freely given and not be a mere acquiescence to police authority. People v. Middleton, 125 Misc.2d 634 (1984) (BR16).

The two arrest warrants cited by Inspector Lipetri and Lieutenant Doyle for § 87(2)(b) were § 87(2)(b) old at the time of this incident (Though not cited by any of the officers, the CCRB obtained two additional warrants for § 87(2)(b) from 2005 and 2006, which listed his address as § 87(2)(b) (BR02)). There is no indication that Inspector Lipetri or Lieutenant Doyle conducted any checks to determine whether the individuals named on the

warrant were still living at that location or whether they would be present at the time of entry. Therefore, it was not reasonable for the officers to believe the subjects of the warrants still lived there or were present at the time they entered. As such, the warrants did not, as contended by Inspector Lipetri, provide a lawful basis for them to enter the location.

It is undisputed that, prior to entering the house, an officer informed § 87(2)(b) that they had warrants for two individuals with § 87(2)(b) listed as their address. It is also credited, as § 87(2)(b) Lieutenant Doyle, and Police Officers Nicosia and Quinn stated, that § 87(2)(b) stepped out of the way for officers to enter the house. What remains in dispute is whether this was a freely given consent or mere acquiescence to police authority. As described by § 87(2)(b) prior to entering the house, in addition to informing her of the warrant, an officer placed his foot and hand on the door and attempted to push it in and threatened to arrest all of the residents of the house if she did not allow them to enter. She stated that she only allowed them to enter in order to avoid a confrontation. Lieutenant Lipetri and Police Officers Quinn and Nicosia denied that officers attempted to force their way in or threatened to arrest her. While the investigation could not determine whether officers did attempt to physically force their way into the house or threatened to arrest the residents, it determined that, in providing consent to officers on the basis of the arrest warrants, she was acquiescing to police authority.

§ 87(2)(g)

**Allegation D – Abuse of Authority – An officer searched § 87(2)(b) s prosthetic leg.**

**Allegation E – Discourtesy – An officer spoke discourteously to § 87(2)(b)**

As previously discussed, the investigation was unable to identify the officer who allegedly searched § 87(2)(b) s prosthetic leg and spoke to his discourteously. § 87(2)(g)

**Allegation F – Discourtesy – Inspector Michael Lipetri spoke discourteously to § 87(2)(b)**

As per § 87(2)(b) and Inspector Lipetri, § 87(2)(b) had been shot in the past and as a result had an amputated leg.

It is undisputed that after Inspector Lipetri informed § 87(2)(b) of Operation Ceasefire, § 87(2)(b) stated, “Well, tell ‘receive fire’ whatever he want from me, they ain’t gon...” Inspector Lipetri replied, “Know what we want? We want the shootings to stop. Look man, look at yourself, same shit.” Inspector Lipetri stated that he was not directing the profanity towards § 87(2)(b) personally, but was directing it at the situation at hand as an appeal to § 87(2)(b) s status as a shooting victim in the context of a conversation about shootings.

Patrol Guide sections 203-09 and 203-10 (BR17) require that NYPD officers be “courteous and respectful” in their public conduct and refrain from making discourteous or disrespectful remarks.

It is undisputed that Inspector Lipetri used the word “shit” while speaking to § 87(2)(b) It



§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

---

Squad: 5

Investigator: \_\_\_\_\_ Alexander Opoku-Agyemang November 16, 2015  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date